

## § 1045.40

(2) The individual who initially receives the challenge provides a response within 90 days to the person bringing forth the challenge.

(3) A decision concerning a challenge involving RD or FRD may be appealed to the DOE Director of Declassification. In the case of FRD and RD related primarily to the military utilization of nuclear weapons, the DOE Director of Declassification shall coordinate with the DoD. If the justification for classification does not satisfy the person making the challenge, a further appeal may be made to the DOE Director of Security Affairs.

(c) Classification challenges concerning documents containing RD and FRD information are not subject to review by the Interagency Security Classification Appeals Panel, unless those documents also contain NSI which is the basis for the challenge. In such cases, the RD and FRD portions of the document shall be deleted and then the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

### § 1045.40 Marking requirements.

(a) RD classifiers shall ensure that each RD and FRD document is clearly marked to convey to the holder that it contains RD or FRD information, the level of classification assigned, and the additional markings in paragraphs (b)(3) and (4) of this section.

(b) *Front Marking.* In addition to the overall classification level of the document, the following notices shall appear on the front of the document, as appropriate:

(1) If the document contains RD:

#### RESTRICTED DATA

This document contains RESTRICTED DATA as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(2) If the document contains FRD but does not contain RD:

#### FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as RESTRICTED DATA in foreign dissemination. Section 144b, Atomic Energy Act of 1954.

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(3) An RD or FRD document shall be marked to identify the classification guide or source document, by title and date, used to classify the document:

Derived from:

(Classification Guide or source document—title and date)

(4) An RD or FRD document shall be marked with the identity of the RD classifier, unless the classifier is the same as the document originator or signer.

RD Classifier:

(Name and position or title)

(c) *Interior Page.* RD classifiers shall ensure that RD and FRD documents are clearly marked at the top and bottom of each interior page with the overall classification level and category of the document or the classification level and category of the page, whichever is preferred. The abbreviations “RD” and “FRD” may be used in conjunction with the document classification (e.g., SECRET RD or SECRET FRD).

(d) *Declassification Marking.* Declassified RD and FRD documents shall be marked with the identity of the individual authorizing the declassification, the declassification date and the classification guide which served as the basis for the declassification. Individuals authorizing the declassification shall ensure that the following marking is affixed on RD and FRD documents which they declassify:

Declassified on:

(Date)

Authorizing Individual:

(Name and position or title)

Authority:

(Classification Guide—title and date)

### § 1045.41 Use of classified addendums.

(a) In order to maximize the amount of information available to the public and to simplify document handling procedures, document originators should segregate RD or FRD into an addendum whenever practical. When RD or FRD is segregated into an addendum,

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the originator shall acknowledge the existence of the classified addendum unless such an acknowledgment would reveal classified information.

(b) When segregation of RD or FRD into an addendum is not practical, document originators are encouraged to prepare separate unclassified versions of documents with significant public interest.

(c) When documents contain environmental, safety or health information and a separate unclassified version cannot be prepared, document originators are encouraged to provide a publicly releasable rationale for the classification of the documents.

### **§ 1045.42 Mandatory and Freedom of Information Act reviews for declassification of restricted data and formerly restricted data documents.**

(a) *General.* (1) Agencies with documents containing RD and FRD shall respond to mandatory review and Freedom of Information Act (FOIA) requests for these documents from the public.

(2) In response to a mandatory review or Freedom of Information Act request, DOE or DoD may refuse to confirm or deny the existence or nonexistence of the requested information whenever the fact of its existence or nonexistence is itself classified as RD or FRD.

(b) *Processing Requests.* (1) Agencies shall forward documents containing RD to DOE for review.

(2) Agencies shall forward documents containing FRD to the DOE or to the DoD for review, depending on which is the originating agency.

(3) The DOE and DoD shall coordinate the review of RD and FRD documents as appropriate.

(4) The review and appeal process is that described in subpart D of this part except for the appeal authority. DOE and DoD shall not forward RD and FRD documents to the the Interagency Security Classification Appeals Panel (ISCAP) for appeal review unless those documents also contain NSI. In such cases, the DOE or DoD shall delete the RD and FRD portions prior to forwarding the NSI and unclassified portions to the ISCAP for review.

(5) *Information Declassification Actions resulting from appeal reviews.* (i) Appeal

reviews of RD or FRD documents shall be based on existing classification guidance. However, the DOE Director of Declassification shall review the RD and FRD information in the appealed document to determine if it may be a candidate for possible declassification.

(ii) If declassification of the information appears appropriate, the DOE Director of Declassification shall initiate a formal declassification action and so advise the requester.

(c) *Denying Official.* (1) The denying official for documents containing RD is the DOE Director of Declassification.

(2) The denying official for documents containing FRD is either the DOE Director of Declassification or an appropriate DoD official.

(d) *Appeal Authority.* (1) The appeal authority for RD documents is the DOE Director of Security Affairs.

(2) The appeal authority for FRD documents is either the DOE Director of Security Affairs, or an appropriate DoD official.

(e) The denying official and appeal authority for Naval Nuclear Propulsion Information is the Director, Office of Naval Reactors.

(f) RD and FRD information contained in documents shall be withheld from public disclosure under exemption 3 of the FOIA (5 U.S.C. 522 (b)(3)) because such information is exempt under the statutory jurisdiction of the Atomic Energy Act.

### **§ 1045.43 Systematic review for declassification.**

(a) The Secretary shall ensure that RD documents, and the DoD shall ensure that FRD documents, are periodically and systematically reviewed for declassification. The focus of the review shall be based on the degree of public and researcher interest and likelihood of declassification upon review.

(b) Agencies with RD or FRD document holdings shall cooperate with the DOE Director of Declassification (and with the DoD for FRD) to ensure the systematic review of RD and FRD documents.

(c) Review of documents in particular areas of public interest shall be considered if sufficient interest is demonstrated. Proposals for systematic document reviews of given collections